

# Election Law Revisions - HB 84 (2015)

## Clean-Up Considerations for the 2017 Session

As of April 5, 2016

No. / Topic	Problem After HB 84 Amendments	Possible Cleanup	Latest Committee Action
1 Election for local government study commission members	<p>Identified by legislative staff during codification -</p> <p>Changes made to 7-3-174(2) seem to require that an election for study commission members must always be held, but it must only be held if the question of establishing a study commission is approved.</p> <p><b>7-3-174. Election dates and procedures.</b> (1) ....</p> <p>(2) An election of study commission members under 7-3-176 must be held in conjunction with a general election held on the date established in 13-1-104.</p> <p>(3) ....</p>	<p><b>7-3-174. Election dates and procedures.</b> (1) ....</p> <p>(2) <del>If the question of establishing a study commission is approved, the election of study commission members under 7-3-176 must be held in conjunction with a general election held on the date established in 13-1-104.</del></p> <p>(3) ....</p>	Voted Feb. 10 to include in the SAVA cleanup bill for further discussion
2 Election on a local government ordinance requested by petition	<p>Identified by legislative staff during codification -</p> <p>HB 84 repealed 7-5-136, which included language that required that an election on a local government ordinance triggered by a petition be conducted "at the next regular election". This removed a timeframe that was not replaced. Without a time limit, a local government could theoretically keep delaying the election.</p>	<p><b>7-5-132. Procedure for initiative or referendum election.</b> (1) The electors of a local government may, by petition, request an election on whether to enact, repeal, or amend an ordinance. ....</p> <p>(5) An election held pursuant to this section must be conducted in conjunction with the next local government election held in accordance with Title 13, chapter 1, part 4, except that if the petition asks for a special election, specifies an election date that complies with 13-1-405, and is signed by at least 25% of the qualified electors, a special election must be held on the date specified in the petition.</p>	Voted Feb. 10 to include in the SAVA cleanup bill for further discussion

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3 Resort tax election	<p>- Identified by the lobbyist of resort districts (Mona Jamison)</p> <p>- Language concerning publication of a notice of the goods and services to be subject to the tax was inadvertently stricken by the drafter in the original bill draft.</p> <p><b>Section 82</b></p> <p><b>7-6-1504. Resort tax -- election required -- procedure -- notice. (1) ...</b></p> <p>(6) <del>(a) Before the resort tax question is submitted to the electorate of a resort community or area, the governing body of the resort community or the board of county commissioners in the county in which the resort area is located shall publish notice of the goods and services subject to the resort tax, in a newspaper that meets the qualifications of subsection (6)(b). The notice must be published twice, with at least 6 days separating publications. The first publication must be no more than 30 days prior to the election and the last no less than 3 days prior to the election. Notice of the election must be accomplished as provided in 13-1-108 and include the information listed in subsection (4) of this section.</del></p> <p>(7) ...</p> <p><b>4 Terms of office for special district officers</b></p> <p>Raised by MACo: With special district elections moved from November to May to be held on school election day, terms of office now need to be extended passed when they normally would have expired in November.</p> <p><b>5 Allow cancellation of a local government study</b></p> <p>Raised by MACo: It is difficult sometimes to find study commission members to serve, so consider a provision allowing the study to not be conducted if a local government can't fill the study commission positions.</p>	<p><b>7-6-1504. Resort tax -- election required -- procedure -- notice. (1) ...</b></p> <p>(4) The petition or resolution referring the taxing question must state:</p> <p>(a) the rate of the resort tax;</p> <p>(b) the duration of the resort tax;</p> <p>(c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election;</p> <p>(d) the goods and services subject to the resort tax; and</p> <p>(e) the purposes that may be funded by the resort tax revenue.</p> <p>(5) On receipt of an adequate petition, the governing body shall hold an election in accordance with Title 13, chapter 1, part 5.</p> <p>(6) Notice of the election must be accomplished as provided in 13-1-108 and include the information listed in subsection (4) of this section. ....</p> <p>(7) ...</p> <p>Proposed by MACo in public comment by MACo on Feb. 10 without proposed language.</p> <p>Proposed by MACo in public comment by MACo on Feb. 10 without proposed language. (Note: Subsequent to the meeting, SAVA's legal staff noted that canceling a study approved by the voters, and that is based on a constitutional provision, may not be constitutional.)</p>	<p>Voted Feb. 10 to include in the SAVA cleanup bill for further discussion</p> <p>Voted Feb. 10 to include in the SAVA cleanup bill for further discussion</p> <p>Voted Feb. 10 to include in the SAVA cleanup bill for further discussion</p>

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6 School district election administration challenges - verifying voter registration, cancellation of an election	<p>Identified by OPI -</p> <p>HB 84 required voter registration deadlines for school election conform to the late voter registration law in Title 13 (otherwise known as same-day voter registration). School districts do not have access to the MT Votes system to verify late voter registration. Thus, voters who later register will have to be issued provisional ballots.</p> <p>Also, school elections may be cancelled because there are not enough candidates, which is also an administrative challenge for school election officials.</p>	<p>OPI suggests that it can better assist school election administrators to navigate the administrative complexities of school elections if OPI is kept informed. Changes proposed are:</p> <p><b>20-20-201. Calling of school election.</b> (1) ...</p> <p>(2) To enable the county election administrator to manage voter registration and prepare the lists of registered electors:</p> <p>(a) the resolution calling for a school election must be transmitted to the county election administrator and the <u>superintendent of public instruction</u> no later than 3 days after the resolution is passed; and</p> <p>(b) ...</p> <p><b>20-3-313. Election by acclamation -- notice.</b> (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under 20-3-305(2)(b) is equal to or less than the number of positions to be elected, the trustees may give notice that a trustee election will not be held. Notice must be given no later than 30 days before the election. ....</p> <p>... (4) A copy of the notice should be send to the <u>superintendent of public instruction</u> within 3 days of declaring the election by acclamation.</p>	To be presented by OPI at SAVA's April 19 meeting

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7 Conservation District Elections	<p>Identified by Sec. of State's Office -</p> <p>HB 84 recognized that conservation district elections are unique and must still be held either with primary or general elections rather than with school elections. This exception was drafted into HB 84 (into the section codified now as 13-1-504, which specifies the date of the elections). However, sections concerning deadlines for write-in candidates and election cancellation may still be interpreted to apply to the conservation district elections that are held with the federal primary or federal general elections.</p>	<p>Amendments proposed by the Sec. of State's Office -</p> <p><b>13-1-502. Deadlines for candidate filing, write-in candidacy, and withdrawal -- election cancellation -- election by acclamation.</b> (1) ...</p> <p>(4) Except for an election held with a <u>federal primary</u> or <u>federal general election</u>, If by the write-in candidate deadline in subsection (3) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing body in writing of the cancellation. However, the governing body may by resolution require that the election be held.</p> <p>....</p>	To be presented by Sec. of State's Office at SAVA's April 19 meeting
8 Cancellation of school and special district elections	<p>Identified by county election administrators -</p> <p>School and special district elections cannot be cancelled until after the deadline for write-in candidates, which is 5 p.m. on the 10th day before the date on which absentee ballots must be available. This is too tight of a timeframe for election administrators, who need to be able to cancel the election sooner.</p>	<p>No language for amendments to current law have yet been proposed.</p>	To be presented by county election administrators at SAVA's April 19 meeting

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9 Ballot availability deadline	<p>Identified by Sec. of State's Office -</p> <p>HB 84 changed the deadline for when ballots were to be made available for an election (not including a special purpose or school district election ) from 30 days to 25 days before the election to allow more time for printing and mailing the ballots. HB 84 also inserted language that the deadline was for an election not conducted by mail.</p> <p>Concern has arisen about this deadline with respect to when the ballot must be mailed to absentee voters during a polling place election versus when the ballot must be available for a person who wants to vote an absentee ballot in person or must be given a ballot when the person is registering to vote after regular registration has closed (30 days before the election).</p>	<p>Governor amendments to HB 84 were contemplated during the 2015 session to address this, but were not pursued. The amendments would have been made to several sections - but the result would have been to provide that the HB 84 change from 30 days to 25 days as the deadline for ballot "availability" would be specified as the deadline to "send" ballots. The deadline for providing a ballot for in-person voting and for when the ballot is provided to a person who is registering to vote after the close of regular registration would change back to 30 days before the election.</p>	To be presented by the Sec. of State's Office at SAVA's April 19 meeting

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10 Notice of close of regular registration for school district elections	Identified by OPI - HB 84 required school district to allow late voter registration. A notice of the close of regular registration is required. OPI says this is causing confusion.	OPI is proposing amendments that would require the county election administrator to provide these notices. <b>13-2-301. Close of regular registration -- notice -- changes.</b> (1) The county election administrator shall: (a) close regular registrations for 30 days before any election; and (b) except as provided in subsection (5), publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice. (2) Information to be included in the notice must be prescribed by the secretary of state. (3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a). (4) An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304. <i>(5) The method of a notice about the close of regular registration for a school election must be as specified in 20-20-204.</i>	To be presented by OPI at SAVA's April 19 meeting

\*\*\*\*\* Bill No. \*\*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act generally revising election laws; allowing local government study commission elections and local government studies to be cancelled when the number of candidates for a study commission is insufficient; clarifying when an election requested by petition concerning a local government ordinance must be held; revising notice requirements in resort tax elections; clarifying terms of office for special district officers elected before 2016; amending sections 7-3-174, 7-3-175, 7-3-176, 7-5-132, 7-6-1504, and 13-1-504, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 7-3-174, MCA, is amended to read:

**"7-3-174. Election dates and procedures.** (1) An election on the question of establishing a study commission under 7-3-173 must be held in conjunction with a primary election held on the date established in 13-1-107.

(2) An Except as provided in 7-3-175, the question of establishing a study commission is approved, the election of study commission members under 7-3-176 must be held in conjunction with a general election held on the date established in 13-1-104.

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(3) The elections must be counted, canvassed, and returned as provided in Title 13 for general elections.

(4) The election administrator shall report the results of an election conducted under 7-3-171 through 7-3-193 to the secretary of state within 15 days of the date the election results become official."

{ Internal References to 7-3-174:  
x7-3-171 \* x7-3-174 \* x7-3-176 }

**Section 2.** Section 7-3-175, MCA, is amended to read:

**"7-3-175. Ballot form and question.** (1) The question of conducting a local government review and establishing a study commission must be submitted to the electors in substantially the following form:

Vote for one:

[ ] FOR the review of the government of (insert name of local government) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the government.

[ ] AGAINST the review of the government of (insert name of local government) and the establishment and funding, not to exceed (insert dollar or mill amount), of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations on the

government.

(2) The ballot must also contain a clear and conspicuous statement informing the voter that pursuant to 7-3-176(5)(b) if the study is approved but there are not enough candidates to fill the study commission positions and the election is cancelled, then the study will not be conducted."

{Internal References to 7-3-175:

x7-3-171 \* x7-3-174 \*

**Section 3.** Section 7-3-176, MCA, is amended to read:

**"7-3-176. Election of commission members -- cancellation -- appointments.** (1) An election to fill the positions on the local government study commission must be held in accordance with 7-3-174. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than the filing deadline established in 13-1-403 must be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates must be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissioners.

(3) Candidates for study commission positions must be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number

of votes, which includes votes cast for candidates who have officially filed nominations and votes for write-in candidates, must be declared elected. If there is a tie vote among candidates, the governing body shall decide by lot which candidate will fill the position.

(5) (a) If the number of candidates filing for election is equal to or less than the number of positions to be filled, the election administrator shall notify the governing body and the governing body shall proceed in accordance with 13-1-403(4) and (5). If the number of study commissioners elected is not equal to the number required to be selected, the presiding officer of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days after the election. An elected official of the local government may not be appointed may by resolution cancel the election and declare the candidates elected by acclamation.

(b) If the number of candidates is less than the number of study commission positions to be filled, the election administrator shall notify the governing body and the governing body may by resolution cancel the election and the study. However, if the governing body does not cancel the election, then the governing body shall fill the positions by appointment. An elected official of the local government may not be appointed."

{Internal References to 7-3-176:  
x7-3-171 \* x7-3-174 x7-3-174 \* }

**Section 4.** Section 7-5-132, MCA, is amended to read:

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**"7-5-132. Procedure for initiative or referendum election.**

(1) The electors of a local government may, by petition, request an election on whether to enact, repeal, or amend an ordinance.

The form of the petition must be approved by the county election administrator. A petition signed by at least 15% of the local government's qualified electors is sufficient to require an election.

(2) (a) If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting an election on whether to amend or repeal the ordinance delays the ordinance's effective date until the ordinance is ratified by the electors.

(b) If an approved petition containing sufficient signatures is filed within 60 days after the effective date of an emergency ordinance, the emergency ordinance is suspended until it is ratified by the electors.

(3) The governing body may refer an existing or proposed ordinance to a vote of the people by resolution.

(4) A petition or resolution for an election must:

(a) embrace only a single comprehensive subject;  
(b) set out fully the ordinance sought, the ordinance to be amended and the proposed amendment, or the ordinance to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain transition provisions if the measure changes

terms of office or forms of government.

(5) An election held pursuant to this section must be conducted in conjunction with the next local government election held in accordance with Title 13, chapter 1, part 4, except that if the petition asks for a special election, specifies an election date that complies with 13-1-405, and is signed by at least 25% of the qualified electors, a special election must be held on the date specified in the petition.

(6) If a majority of those voting on the question approve the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal."

{ Internal References to 7-5-132:

x3-10-101 \* x3-11-101 \* x7-1-4130 \* x7-3-1204 \*  
x7-5-131 \* x7-5-134 x7-6-1504 x16-1-205  
x16-1-205 \* }

**Section 5.** Section 7-6-1504, MCA, is amended to read:

**"7-6-1504. Resort tax -- election required -- procedure -- notice.** (1) A resort community or area may not impose or, except as provided in 7-6-1505, amend or repeal a resort tax unless the resort tax question has been approved by a majority of the qualified electors voting on the question.

(2) The resort tax question may be presented to the qualified electors of:

- (a) a resort community by a petition of the electors as provided by 7-5-131, 7-5-132, 7-5-134, 7-5-135, and 7-5-137 or by a resolution of the governing body of the resort community; or
- (b) a resort area by a resolution of the board of county

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commissioners, following receipt of a petition of electors as provided in 7-6-1508.

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the qualified electors in the resort area of each county.

(4) The petition or resolution referring the taxing question must state:

- (a) the rate of the resort tax;
- (b) the duration of the resort tax;
- (c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election;
- (d) the goods and services subject to the resort tax; and
- ~~(d)~~(e) the purposes that may be funded by the resort tax revenue.

(5) On receipt of an adequate petition, the governing body shall hold an election in accordance with Title 13, chapter 1, part 5.

(6) Notice of the election must be accomplished as provided in 13-1-108 and include the information listed in subsection (4) of this section.

(7) The question of the imposition of a resort tax may not be placed before the qualified electors more than once in any fiscal year."

{ Internal References to 7-6-1504:

x7-6-1502 \* x7-6-1502 \* x7-6-1503 x7-6-1506  
x7-6-1508 x7-6-1508 x7-6-1509 x7-6-1541  
x7-7-4424 \* }

**Section 6.** Section 13-1-504, MCA, is amended to read:

**"13-1-504. Dates for special purpose district elections --**

**call for election.** (1) Except as provided in subsection (2), the following elections for a special purpose district must be held on the same day as the regular school election day established in 20-20-105(1), which is the first Tuesday after the first Monday in May:

- (a) an election to create, alter the boundaries of, continue, or dissolve a special purpose district; and
  - (b) an election to fill a special purpose district office.
- (2) (a) A special purpose district election that includes a question affecting district funding, such as fee assessments, bonds, or the sale or lease of property, may be held on the day specified in subsection (1) or scheduled as a special election.
- (b) A conservation district election must be held on a primary or general election day.
- (3) If specifically authorized by law, a special purpose district election may be held at the district's annual meeting.
- (4) A special purpose district election may not be held earlier than 85 days after the date of the order or resolution calling for the election.
- (5) Pursuant to 13-19-201, the governing body authorized by law to call an election shall specify in the order or resolution calling for the election whether the governing body is requesting that the election be conducted by mail.
- (6) Notwithstanding any other provision of law, the term of office for a special district officer that was elected in a

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November election before 2016 does not expire until a successor  
is elected or appointed and sworn in."

{ Internal References to 13-1-504:

x7-6-1544      x7-13-2323      x20-15-203      x20-15-231  
x22-1-304 }

NEW SECTION.   Section 7. {standard} Effective date. [This  
act] is effective on passage and approval.

- END -

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